

FILED & ENTERED

AUG 23 2019

CLERK U.S. BANKRUPTCY COURT
Central District of California
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NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re:

ARTURO GONZALEZ,

Debtor.

Case No. 2:15-bk-25283-RK

Chapter 7

**MEMORANDUM DECISION ON MOTIONS
OF DEBTOR TO ALTER OR AMEND
JUDGMENT, OR FOR NEW TRIAL
PURSUANT TO FEDERAL RULE OF
BANKRUPTCY PROCEDURE 9023 AND
TO AMEND FINDINGS OF FACT AND
CONCLUSIONS OF LAW PURSUANT TO
FEDERAL RULE OF BANKRUPTCY
PROCEDURE 7052 CONCERNING
HOMESTEAD EXEMPTION DECISION
AND "TOOLS OF THE TRADE"
EXEMPTION DECISION**

Date: August 20, 2019

Time: 10:30 a.m.

Place: Courtroom 1675

Roybal Federal Building
255 East Temple Street
Los Angeles, CA 90012

This bankruptcy case came on for hearing before the undersigned United States Bankruptcy Judge on August 20, 2019 on the motions of Debtor Arturo Gonzalez ("Debtor") to alter or amend judgment, or for new trial, in this bankruptcy case pursuant to Federal

1 Rule of Bankruptcy Procedure 9023 and to amend findings of fact and conclusions of law
2 pursuant to Federal Rule of Bankruptcy Procedure 7052, filed on July 8, 2019 (Docket
3 Number 419) regarding the court's rulings on the contested matters of the motions of
4 Wesley H. Avery, the Chapter 7 Trustee, objecting to Debtor's claims of a homestead
5 exemption and a "tools of the trade" exemption on his amended bankruptcy schedules.
6 Debtor Arturo Gonzalez appeared for himself. Brett Curlee, of the Law Offices of Brett B.
7 Curlee, appeared for Wesley H. Avery, Chapter 7 Trustee ("Trustee"). Trustee Wesley H.
8 Avery also appeared for himself.

9 On March 27, 2019, the court filed and entered a memorandum decision amending
10 prior decisions after trial on the contested matter of the Chapter 7 Trustee's motion
11 objecting to Debtor's claimed homestead exemption in real property located at 329
12 Hawaiian Avenue, Wilmington, CA, and ruling on the contested matter of the Chapter 7
13 Trustee's motion objecting to Debtor's amended claimed homestead exemption on the
14 same property and tools of the trade exemption, which set forth its findings of fact and
15 conclusions of law after trial on these contested matters (Docket Number 364). On April
16 16, 2019, the court filed and entered its final order (or judgment) thereon in these
17 contested matters (Docket Number 373). In its memorandum decision and final order
18 thereon, the court granted the Chapter 7 Trustee's motions objecting to the homestead and
19 tools of the trade exemptions claimed by Debtor based on state law principles of equitable
20 estoppel that it was inequitable for Debtor to change his exemptions once he claimed and
21 litigated an alternative set of exemptions and that he did not have a valid tools of the trade
22 exemption in his sales commission income because cash or cash equivalents cannot be
23 considered tools of the trade (Docket Numbers 364 and 373). By order filed and entered
24 on May 1, 2019 (Docket Number 383), the court granted Debtor's request to clarify the
25 deadline when a notice of appeal of the final order must be filed and extended the deadline
26 to May 14, 2019.

27 On May 14, 2019, Debtor filed his initial motions to alter or amend judgment, or for
28 new trial, pursuant to Federal Rule of Bankruptcy Procedure 9023 and to amend findings of

1 fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052
2 (Docket Number 388). Debtor's argument in support of these motions was that his real
3 property was sold without due process of law because the Chapter 7 Trustee failed to
4 object to time-barred claims of certain creditors under 11 U.S.C. § 704(a)(5). *Id.* On May
5 21, 2019, the Chapter 7 Trustee filed a written opposition to these motions (Docket
6 Number 389). By order filed and entered on June 20, 2019 (Docket Number 407), the
7 court denied Debtor's initial motions to alter or amend judgment, or for new trial, and to
8 amend findings of fact and conclusions of law because the motions failed to comply with
9 the requirement of Local Bankruptcy Rule 9013-1(c) relating to notice of motion, and the
10 order stated that the motions were being denied without prejudice and that Debtor could
11 renote the motions in compliance with Local Bankruptcy Rule 9013-1(c).

12 On July 8, 2019, Debtor filed his subsequent motions to alter or amend judgment, or
13 for new trial, pursuant to Federal Rule of Bankruptcy Procedure 9023 and to amend
14 findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure
15 7052 (Docket Number 159), which are the matters now before the court. Debtor's
16 argument in support of these motions was essentially the same as the initial motions; that
17 is, that his property was sold without due process of law because the Chapter 7 Trustee
18 failed to object to time-barred claims of certain creditors under 11 U.S.C. § 704(a)(5), but
19 also that certain real estate sales commissions were not estate property because the
20 commissions belonged to a separate legal entity, Long Beach Realty, Inc., and need not
21 have been turned over to the Trustee because the Trustee had not "pierced the corporate
22 veil." *Id.* Debtor in making this other argument apparently argues that the real estate
23 commissions should not be held by the Trustee as estate assets, but turned over to Long
24 Beach Realty, Inc., a separate legal entity. On July 30, 2019, the Chapter 7 Trustee filed a
25 written opposition to these subsequent motions (Docket Number 432).

26 Debtor's motions to alter or amend judgment, or for new trial, pursuant to Federal
27 Rule of Bankruptcy Procedure 9023 and to amend findings of fact and conclusions of law
28 pursuant to Federal Rule of Bankruptcy Procedure 7052 are subject to time limitations; that

1 is, the motions must be timely filed within 14 days of entry of judgment as set forth in these
2 rules. *See also In re Captain Blythers, Inc.*, 311 B.R. 530, 539 (9th Cir. BAP 2004),
3 *affirmed*, 182 Fed. Appx. 708 (9th Cir. 2006). Since judgment was entered on April 16,
4 2019, the 14-day deadline to file was April 30, 2019, but the court had ordered the deadline
5 for appeal extended to May 14, 2019, which extended the deadline to file these motions.
6 Debtor thus timely filed his initial motions to alter or amend judgment, or for new trial,
7 pursuant to Federal Rule of Bankruptcy Procedure 9023 and to amend findings of fact and
8 conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052 when he filed
9 them on May 14, 2019. The court denied these initial motions on procedural grounds by its
10 order filed and entered on June 20, 2019. However, in this order, the court stated that the
11 motions were denied without prejudice and that Debtor “may renote the Motions for a
12 hearing if he complies with Local Bankruptcy Rule 9013-1(c), filing with the court and
13 serving on the other parties a proper written notice of the date, time and place of hearing
14 on the Motions” (Docket Number 407). While Debtor reiterated his argument of his initial
15 motions in his subsequent motions as to the homestead exemption, he added a new
16 argument as to the tools of the trade exemption that the sales commissions in which the
17 tools of the trade exemption is claimed are not estate property because they belonged, not
18 to Debtor, but to Long Beach Realty, Inc., a separate legal entity. However, because the
19 argument in the subsequent motions as to the tools of the trade exemption is different from
20 the initial motions, the court determines that the language permitting the initial motions to
21 be renoted for hearing does not apply to the argument in the subsequent motions as to
22 the tools of the trade exemption that the sales commissions belong to a separate legal
23 entity because such argument does not relate back to the initial motions. Thus, such
24 argument in the subsequent motions is untimely and should be denied as untimely, having
25 not been brought by the deadline of May 14, 2019.

26 Assuming for the sake of argument that Debtor’s argument relating to the sales
27 commissions in the subsequent motions to alter or amend judgment, or for new trial,
28 pursuant to Federal Rule of Bankruptcy Procedure 9023 and to amend findings of fact and

1 conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052 is timely, the
2 court addresses Debtor's motions on the merits.

3 Federal Rule of Bankruptcy Procedure 9023 makes applicable Federal Rule of Civil
4 Procedure 59 in cases under the Bankruptcy Code, 11 U.S.C. The grounds for motions to
5 alter or amend judgment under Federal Rule of Civil Procedure 59(e) are shown if movant
6 demonstrates one of the following: (1) there is newly discovered evidence that could not
7 have been discovered previously; (2) the court committed clear error or its initial decision is
8 manifestly unjust; or (3) there is an intervening change in the controlling law. 3 Jones,
9 Rosen, Wegner and Jones, *Rutter Group Practice Guide: Federal Civil Trials and*
10 *Evidence*, ¶ 20-300 at 20-59 (2018), *citing inter alia*, *Allstate Insurance Co. v. Herron*, 634
11 F.3d 1101, 1111 (9th Cir. 2011) (citation omitted). "A motion to alter or amend judgment
12 'may not be used to relitigate old matters, or to raise arguments or present evidence that
13 could have been raised prior to the entry of judgment.'" 3 Jones, Rosen, Wegner and
14 Jones, *Rutter Group Practice Guide: Federal Civil Trials and Evidence*, ¶ 20-271 at 20-55,
15 *citing*, *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n. 5 (2008), *citing and quoting*, 11
16 Wright and Miller, *Federal Practice and Procedure*, §2810.1 at 127-128 (2nd ed. 1995). As
17 the Ninth Circuit has stated, "amending a judgment after its entry remains 'an extraordinary
18 remedy which should be used sparingly.'" *Allstate Insurance Co. v. Herron*, 634 F.3d at
19 1111.

20 Debtor has not demonstrated that there are grounds under Federal Rule of Civil
21 Procedure 59 to amend or alter the judgment. Debtor's argument is that the court's
22 findings of fact and conclusions of law in its memorandum decision and in its final order are
23 incorrect because his real property was sold without due process of law because the
24 Chapter 7 Trustee failed to object to time-barred claims of certain creditors under 11
25 U.S.C. § 704(a)(5), and that certain real estate sales commissions were not property of the
26 bankruptcy estate because the commissions belonged to a separate legal entity, Long
27 Beach Realty, Inc., and need not have been turned over to the Trustee because the
28 Trustee had not "pierced the corporate veil." Debtor's arguments do not establish relief to

1 amend or alter judgment because Debtor does not argue that there is newly discovered
2 evidence or that there is an intervening change in the law and because he has not shown
3 that the court committed clear error or that its initial decision was unjust because there is
4 sufficient legal authority and evidence to support the decision. This argument may not be
5 raised now because it is simply an argument that could have been raised before the court
6 entered judgment on this contested matter, but it was not raised before judgment.

7 In considering Debtor's motion to amend or alter judgment, the court has reviewed
8 its findings of fact and conclusions of law in the memorandum decision and does not see
9 any error or injustice in the rulings. As the court explained in its 59-page memorandum
10 decision, Debtor was equitably estopped under applicable California state law from later
11 claiming a different set of exemptions under California law from the set he claimed and
12 litigated with the Trustee to final judgment, which resulted in detriment to the Trustee and
13 the estate, and the "tools of the trade" exemption does not apply to the real estate sales
14 commissions as "working capital" (although the court allowed a "tools of the trade"
15 exemption for business equipment valued at \$400) (Docket Number 364).

16 Debtor does not explain why this analysis of the law and evidence is incorrect other
17 than to argue that his real property was sold without due process of law because the
18 Chapter 7 Trustee failed to object to time-barred claims of certain creditors under 11
19 U.S.C. §704(a)(5), and that certain real estate sales commissions were not estate property
20 because the commissions belonged to a separate legal entity, Long Beach Realty, Inc.
21 With respect to the first of these two arguments that Debtor makes in support of his motion
22 to amend or alter judgment (i.e., that his real property was sold without due process of law
23 because the Chapter 7 Trustee failed to object to time-barred claims of certain creditors
24 under 11 U.S.C. §704(a)(5)), the court determines that such argument lacks merit because
25 the court specifically addressed this argument in its memorandum decision at pages 48
26 through 54 in stating that the Trustee did not act contrary to his statutory duties under 11
27 U.S.C. § 704(a)(4) and (5) in taking the actions he did in seeking turnover of the real estate
28 sales commissions and selling Debtor's real property. Docket Number 364 at 48-54.

1 Debtor was accorded due process of law as to the sale of his real property as indicated by
2 the proceedings relating to the Trustee's motion to sell the property under 11 U.S.C. § 363,
3 wherein Debtor was given notice and opportunity to be heard before the court authorized
4 the sale of the property in a final order on which Debtor had the opportunity to take an
5 appeal and did not. *Notice of Motion and Motion for Sale of Property*, Docket Numbers
6 100-102, filed on June 16, 2019; *Debtor's Opposition thereto*, Docket Number 116, filed on
7 July 5, 2016; *Order Granting Motion for Sale of Real Property*, filed and entered on July 29,
8 2016.

9 With respect to the second argument that the real estate sales commissions were
10 not estate property because they belonged to Long Beach Realty, Inc., a separate legal
11 entity, the court also determines that such argument lacks merit because the evidence
12 supported the court's factual findings that the real estate sales commissions were property
13 of the bankruptcy estate. As the Trustee points out in his opposition to these motions,
14 Debtor had scheduled the commissions on his original bankruptcy petition and schedules
15 (he listed Long Beach Realty, Inc., as an asset, including its accounts receivable (i.e., the
16 commissions) and claimed a personal exemption in the commissions), he admitted that he
17 was Long Beach Realty, Inc.'s alter ego, and he claimed the commissions as his personal
18 income in support of his motion to convert the case to Chapter 13, saying at trial that he
19 withheld the commissions from the Trustee to repay creditors. *Opposition*, Docket Number
20 432 at 3-18, 22-23 (Curlee Declaration) and Exhibit Q attached thereto; *see also, e.g.,*
21 *Petition*, Main Bankruptcy Case, Docket Number 1. As the court found based on evidence
22 adduced at trial in the adversary proceeding, Adv. No. 2:16-ap-01037-RK, Debtor had
23 listed some but not all of the commissions as assets on his amended bankruptcy
24 schedules and claimed personal exemptions in the commissions which exemptions were
25 litigated on the Trustee's motion for turnover in the adversary proceeding, and Debtor and
26 the Trustee stipulated to allow Debtor to retain some of the commissions as his personally
27 exempt assets. *Findings of Fact and Conclusions of Law*, Adversary Proceeding No. 2:16-
28 ap-01037-RK, Docket Number 123 at 2-22, filed on March 27, 2019. The evidence at trial

1 in the adversary proceeding showed that Debtor paid himself the commissions when they
2 were received from escrow because he was the real estate broker and salesperson who
3 generated the commissions from his personal sales activities, and this fact alone indicates
4 that the commissions were property of the bankruptcy estate which Debtor was obligated
5 to disclose on his bankruptcy documents and turn over to the Trustee because the sales
6 transactions were in escrow as of the date that Debtor filed his bankruptcy petition, and he
7 had the right to the commissions as a participating real estate broker and sales agent. *Id.*
8 Whether the sales commissions were payable to Long Beach Realty, Inc. does not matter
9 because Debtor had the right to payment of the commissions as the participating real
10 estate broker and sales agent responsible for generating the commissions, whether directly
11 payable from escrow or indirectly through Long Beach Realty, Inc., Debtor's wholly owned
12 and controlled California S corporation¹. The sales commissions were accounts receivable
13 of Long Beach Realty, Inc., but they were also accounts receivable of Debtor because he
14 was the real estate broker and sales agent who generated the sales commissions from his
15
16

17 ¹ A California S Corporation (with the "S" referring to Subchapter S of the Internal Revenue Code, 26 U.S.C.)
18 is a corporation incorporated under California law which is treated like a partnership for federal and state
19 income tax purposes whereby each item of income and expense is "passed through" directly to the
20 shareholder(s) and is not taxed at the corporate level. Fotenos and Rybka, *Rutter Group California Practice*
21 *Guide: Corporations*, ¶¶119 and 120 (online ed., February 2019 update), *citing inter alia*, California Revenue
22 & Taxation Code, §§23801(a); Subchapter S of the Internal Revenue Code, 26 U.S.C. §§1361-1379;
23 *Valentino v. Franchise Tax Board*, 87 Cal.App.4th 1284, 1288-1289 (2001); *Handlery Hotels, Inc. v. Franchise*
24 *Tax Board*, 39 Cal.App.4th 1360, 1363 (1995). As one California corporate law treatise has observed, "[t]his
25 gives the owners of closely-held corporations the advantages of the corporate form (e.g., centralized
26 management, limited personal liability), while avoiding the double-taxation of corporate profits." *Id.* While
27 California imposes a 1.5% franchise tax on the S corporation's net taxable income, the profits and losses of a
28 California S corporation are "passed through" to the shareholders for state and federal income tax purposes.
Id. The income and expenses of Long Beach Realty, Inc., Debtor's wholly owned California S corporation
"passed through" and are attributable to him and reportable on his state and federal income tax returns.
Thus, the income from the real estate sales commissions paid to Long Beach Realty, Inc., "passed through"
to Debtor as its sole shareholder, and while it may have a business deduction for paying compensation to its
broker and salesperson whose services generated the commissions, who was Debtor anyway, the net
income from the commissions paid to the S corporation are attributable to Debtor, and the compensation from
the S corporation to its broker and salesperson, Debtor, are reportable by Debtor on his state and federal
income tax returns. Debtor had prepetition accounts receivable from the commissions generated by his
prepetition services as a broker and salesperson either way attributable to him as the sole shareholder of his
S corporation, Long Beach Realty, Inc., and/or its broker and salesperson.

(continued)

1 involvement in the sales transactions pending at the time he filed his bankruptcy petition.²
2 The evidence thus supports the factual findings of the court in the adversary proceeding
3 that the real estate sales commissions were earned by Debtor and thus belonged to him as
4 of the petition date, making them property of the bankruptcy estate under 11 U.S.C. §541,
5 and these findings were not clearly erroneous.

6 Moreover, as a theoretical matter, Debtor cannot show clear error or manifest
7 injustice as to the rulings on the homestead exemption and the tools of the trade
8 exemption based on his new argument that the real estate sales commissions did not
9 belong to him, but to Long Beach Realty, Inc., a separate legal entity, because this
10 argument does not support his assertion that the court's rulings partially disallowing his
11 homestead and tools of the trade exemptions. If Debtor's theory about the commissions
12 not being his property is correct, the commissions would not be property of the bankruptcy
13 estate under 11 U.S.C. §541, and thus, he could not claim personal exemptions in property
14 that does not belong to him, not being property of the estate. As the Supreme Court has
15 observed about exemptions from the bankruptcy estate, "An estate in bankruptcy consists
16 of all the interests in property, legal and equitable, possessed by the debtor at the time
17

18 ² At the hearing on August 20, 2019, Debtor blamed his former bankruptcy attorney, Anerio Altman, for
19 listing his sales commissions earned prepetition but received postpetition as his assets on his bankruptcy
20 schedules filed in this case, when Debtor now says that they were not his assets required to be listed on his
21 schedules because they belonged to Long Beach Realty, Inc., a separate legal entity. Audio Recording of
22 Hearing, August 20, 2019, at 11:05-11:07 a.m. This is ironic because as late as May 2019, only two months
23 ago, Debtor has taken the contrary position in other litigation in this case that the sales commissions earned
24 prepetition and received postpetition were his in making factual allegations in his second amended complaint
25 filed on May 9, 2019 in Adversary Proceeding No. 2:18-ap-01371-RK (Docket No. 45, ¶¶27-28) that "Plaintiff
26 [Debtor Arturo Gonzalez] had earned \$44,303 in sales commissions prepetition and received postpetition"
27 and "Plaintiff had received all commissions by December 15th, 2015." See *a/so*, First Amended Complaint,
28 Adv. No. 2:18-ap-01371-RK, filed on January 28, 2019 (Docket No. 17, ¶¶27-28) (identical factual allegations
that the sales commissions earned prepetition and received postpetition were his). In these pleadings, which
he filed on his own without the assistance of counsel, Debtor did not allege that these sales commissions
were not his because they were Long Beach Realty's. *Id.* In Debtor's signing and filing these pleadings
containing factual allegations that he earned \$44,303 in sales commissions prepetition and received post
petition, Debtor as plaintiff in Adversary Proceeding No. 2:18-ap-01371-RK had certified under Federal Rule
of Bankruptcy Procedure 9011 to the best of his "knowledge, information and belief, formed after an inquiry
reasonable under the circumstances" that his allegations had evidentiary support. Federal Rule of
Bankruptcy Procedure 9011(b)(3). Debtor cannot blame his former attorney for the alleged
mischaracterization of the sales commissions because the truth is that he earned them and was required to
list them on his bankruptcy schedules. Litigation should not be a game of Whac-A-Mole where Debtor gets to
pop up another argument or theory when his earlier arguments or theories fail.

(continued)

1 of filing, as well as those interests recovered or recoverable through transfer and lien
2 avoidance provisions. An exemption is an interest withdrawn from the estate (and
3 hence from the creditors) for the benefit of the debtor.” *Owen v. Owen*, 500 U.S. 305,
4 308 (1991). There must be some property interest to be withdrawn from the bankruptcy
5 estate in order to be exempt; otherwise, there is nothing to exempt if the property interest
6 cannot be withdrawn from the bankruptcy estate. *Id.* Thus, accepting Debtor’s argument
7 that the real estate sales commissions did not belong to him since they belong to Long
8 Beach Realty, Inc., he cannot claim any exemptions in property that is not part of the
9 bankruptcy estate, and thus, his claimed homestead and tools of the trade exemptions are
10 subject to objection as the Trustee has done, and the court’s rulings partially disallowing
11 Debtor’s claimed exemptions are not clearly erroneous or otherwise manifestly unjust.³

12 The grounds for motions for new trial under Federal Rule of Bankruptcy Procedure
13 9023 and Federal Rule of Civil Procedure 59 are not specifically enumerated, but some of
14 the more common grounds for such motions recognized in the federal courts include the
15 following: (1) the verdict is against the clear weight of the evidence; (2) there is newly
16 discovered evidence that could not have been discovered previously; (3) there is
17 prejudicial misconduct by the court; and (4) there is prejudicial misconduct by opposing
18 counsel. 3 March, Ahart and Shapiro, *Rutter Group California Practice Guide: Bankruptcy*,
19 ¶ 20:100 at 20-19, *citing inter alia*, Federal Rule of Civil Procedure 59; 3 Jones, Rosen,
20 Wegner and Jones, *Rutter Group Practice Guide: Federal Civil Trials and Evidence*, ¶¶ 20-
21 100 - 20-247 at 20-19 - 20-50). As for Debtor’s motion to amend or alter judgment,
22 similarly, Debtor’s motion for new trial should be similarly denied because there is no error
23
24

25 ³ It is also unclear to the court how Debtor can challenge its rulings on the homestead exemption based on
26 the argument that the real estate sales commissions belonged to another party since he never claimed a
27 homestead exemption in the real estate sales commissions and such assets derived from his personal
28 earnings as a real estate broker and salesperson cannot be a “homestead.” See, e.g., Amended Schedules,
Docket No. 85, filed on May 9, 2016 (Amended Schedule C-Property Claimed as Exempt, claiming a
homestead exemption of \$75,000.00 in the real property at 329 Hawaiian Avenue, Wilmington, CA, under
California Code of Civil Procedure §704.730 and a “tools of the trade” exemption of \$7,625.00 in accounts
receivable from the real estate sales commissions under California Code of Civil Procedure §704.060(a)(1).

1 of law, there is no newly discovered evidence or there are no other grounds to warrant a
2 new trial.

3 Federal Rule of Bankruptcy Procedure 7052 makes applicable Federal Rule of Civil
4 Procedure 52 in adversary proceedings. Motions to amend findings of fact and
5 conclusions of law under Federal Rule of Civil Procedure 52(b) are granted only if movant
6 demonstrates one of the following: (1) the court made a mistake of law or fact; (2) there is
7 newly discovered evidence that could not have been discovered previously; or (3) the
8 result is unjust. 3 Jones, Rosen, Wegner and Jones, *Rutter Group Practice Guide: Federal*
9 *Civil Trials and Evidence*, ¶ 17-152 at 17-33, *citing, Deutsch v. Burlington Northern*
10 *Railroad Co.*, 983 F.2d 741, 744 (7th Cir. 1992) (citation omitted). However, motions to
11 amend findings of fact and conclusions of law cannot be used to raise arguments that
12 could have been raised prior to entry of judgment. *Id.*, ¶ 17-153 at 17-33, *citing inter alia*,
13 *Diocese of Winona v. Interstate Fire & Casualty Co.*, 89 F.3d 1386, 1397 (8th Cir. 1996)
14 (citation omitted). As for Debtor's motions to amend or alter judgment, or for new trial,
15 Debtor's motion to amend findings of fact and conclusions of law should also be denied
16 because there is no error of law, there is no newly discovered evidence and the result is
17 not unjust, and in addition, the motion should be denied because there is no showing that
18 Debtor raised his argument before judgment was entered.

19 If Debtor believes that the final order (or judgment) of the court disallowing his
20 homestead and "tools of the trade" exemptions should be reversed because either the
21 findings of fact were clearly erroneous and/or the conclusions of law were erroneous, his
22 remedy is to take an appeal of the final order or judgment because the final order or
23 judgment will become final if he does not take a timely appeal pursuant to Federal Rules of
24 Bankruptcy Procedure 8001 *et seq.* Debtor's remedy is not filing repetitive motions to
25 amend or alter judgment, for new trial or to amend findings of fact and conclusions of law,
26 which will be going over the same ground and will likely result in the court imposing
27 sanctions pursuant to Federal Rule of Bankruptcy Procedure 9011 since it is not likely that
28 such repetitive motions will be filed in good faith because the court's final order disallowing

1 the homestead and “tools of the trade” exemptions and this order denying these motions
2 will be the “law of the case.” See *Dye v. Communications Ventures III, LP (In re Flashcom,*
3 *Inc.)*, 503 B.R. 99, 127 (C.D. Cal. 2013), *citing and quoting, United States v. Jingles*, 702
4 F.3d 494, 499 (9th Cir. 2012) (“Under the ‘law of the case’ doctrine, a court [will not]
5 reexamine[e] an issue previously decided by the same or higher court in the same case.”);
6 *United States v. Smith*, 389 F.3d 944, 948 (9th Cir. 2004) (The law of the case doctrine “is
7 founded upon the sound public policy that litigation must come to an end” and “serves to
8 advance the principle that in order to maintain consistency during the course of a single
9 lawsuit, reconsideration of legal questions previously decided should be avoided.”).

10 For the foregoing reasons, the court denies Debtor’s motions to alter or amend
11 judgment, or for new trial, pursuant to Federal Rule of Bankruptcy Procedure 9023 and to
12 amend findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy
13 Procedure 7052 on procedural grounds for the new argument not being timely made and
14 on substantive grounds on the merits. A separate final order is being filed and entered
15 concurrently herewith.

16 IT IS SO ORDERED.

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24 Date: August 23, 2019



Robert Kwan
United States Bankruptcy Judge